

Dear colleagues,

The health crisis we are experiencing is having an undeniable effect —both direct and indirect— on the global economy and business activity, which is triggering legal consequences of various kinds.

Only three days after the World Health Organization elevated the COVID-19 epidemic to an international pandemic on March 14th, and for the second time in our democratic history, the Government declared a state of alarm by approving, among others, two extraordinary regulatory provisions:

- On March 14th, 2020, the Royal Decree 463/2020 was approved, declaring the state of alarm for the management of the health crisis situation caused by COVID-19, which came into force immediately and was amended by the Royal Decree 465/2020 of March 17th (hereinafter, the “State of Alarm RD” or “RD 463/2020”), and
- on March 17th, 2020, the Royal Decree Law 8/2020, on urgent extraordinary measures to deal with the economic and social impact of COVID19 (“RDL 8/2020”) was approved.

Given these exceptional circumstances, which are unprecedented in our country, we at Women in a Legal World (WLW) want you to have the most up-to-date information and all the necessary legal tools to help you face this situation.

This is the purpose with which we have elaborated this guide that counts on the participation of our expert partners in the following areas: civil, commercial, procedural, administrative, labor, tax, bankruptcy, intellectual property, competition, etc., which are the areas that have been most affected by this health crisis.

Among the several questions that many companies have asked in recent days, we find the following one: how can we protect our rights in this scenario?

Without wishing to advance anything that will later be analysed in more detail throughout the guide, I would like to share 6 recommendations to be taken into account in this regard:

1. Examine the contract and see if there is a force majeure clause, analyse if that clause can be understood to include a case such as the coronavirus, what risks each party must respond to, if there is a specific time frame for action and what the causes for early termination that can be invoked are, etc.
2. Examine what the applicable law is, either as a supplement to the contractual provisions or in a supplementary manner if such provision does not exist.
3. Review the insurance policies taken out to analyse their scope, whether force majeure is excluded or not, what procedures and deadlines are to be taken into account for the purposes of reporting potential damage, identifying the circumstances that aggravate the contracted risks and the resulting duties.
4. Adopt measures to mitigate the damage by anticipating and avoiding your own acts that could harm possible future actions, exhausting all means at your disposal, including alternative means to perform agreed obligations.

5. Contact the counterpart in writing to explain the circumstances as soon as possible, but evaluate if this contact and statements may have any effect on other contracts.
6. Collect evidence in parallel, e.g., press releases, network statements, recording and transcribing verbal conversations, etc.

Likewise, in the event that we have to formalize a new contract, we advise you to carefully consider the clauses of force majeure, evaluating the choice of the applicable law and the clauses of submission to courts or arbitration, because I consider that arbitration and mediation can be the greatest allies to overcome these controversies.

The complicated situation that we are facing and which affects so many companies, together with the paralysis of most legal proceedings in virtually all countries and the impossibility of filing new lawsuits, is going to cause real difficulties for the judicial administration in many countries, including Spain, when managing existing conflicts as well as those that are already emerging.

This is why, in this scenario, where international interests converge, arbitration and mediation are going to play a fundamental role in the resolution of the conflicts originated by the coronavirus.

Finally, I do not want to end without making the following reflection: although there is probably ample room for legal debate on the interpretation of force majeure clauses and the potential application of the *rebus sic stantibus* clause, and it is important that we follow the recommendations indicated from this very moment, I think that commercial considerations should take priority. If suppliers, subcontractors and contractors wish to continue working together in the future, in circumstances where neither party is at fault, the understanding of both parties will be required. If the shared objective is the resumption of performance as soon as possible, collaboration must be the way forward.

We are all dealing with a transformative moment, both for our business and for the world we live in. It is difficult to predict how we will emerge from this turbulent period, but I firmly believe that difficulties strengthen the entrepreneurial spirit and the sense of community, so now we need to be united more than ever.

On behalf of the entire Board of Directors and on my own behalf, I wish you all the best to get through this difficult time in a safe way, with peace, serenity and unity.

Do not hesitate to contact us to solve any doubt that may arise or any suggestion you may have at the following e-mail: wlw@womeninalegalworld.com

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